(30,735)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 770

CHANG CHAN, WONG HUNG KAY, YEE SIN JUNG, ET AL.

vs.

JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Certificate from the United States circuit court of appeals for the ninth circuit	1	1
Statement of facts	1	1
Questions certified	5	4
Judges' signatures	5	4
Clerk's certificate	5	4

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[fol. 1] IN THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 4384

CHANG CHAN, WONG JUNG KAY, YEE SIN JUNG, and JING HING Wah, Petitioners, and Chan Shee, Kon Shee, Wong Shee, and Ng Yuet Seung, Detained, on Habeas Corpus, Appellants,

vs.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco, Appellee

Appeal from the United States District Court for the Northern District of California, Southern Division Thereof, Second Division

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit certifying certain questions or propositions of law to the Supreme Court of the United States under Section 293 of the Judicial Code

Before Gilbert, Hunt, and Rudkin, Circuit Judges

STATEMENT OF FACTS

This action came to the Circuit Court of Appeals for the Ninth Circuit upon appeal from the judgment of the United States District Court for the Northern District of California, Southern Division thereof, Second Division, in favor of John D. Nagle, Commissioner of Immigration for the Port and District of San Francisco, respondent in the District Court, and against Chang Chan, Wong Jung Kay, Yee Sin Jung, Jin- Hing Wah, Chan Shee, Kon Shee, Wong Shee and Ng Yuet Seung, the petitioners and detained in the District Court, and the appellants before this Court.

The action was to release the detained petitioners of the restraint imposed by the appellee. The petition for habeas corpus was prayed for by the first four named appellants, and alleges that they are [fol. 2] each citizens of the United States, and that the last four named appellants are respectively their wives, who arrived at the Port of San Francisco on the SS President Lincoln July 11th, 1924, and sought the right of permanent admission into the United States upon the ground that each of them is the wife of one of the petitioners before the court, each of the latter being a citizen of this country and permanently domiciled therein, as in each instance specifically set forth in the petition. They were each awaiting a setting of their cases for trial by the Commissioner of Immigration and had the necessary witnesses all in readiness to appear for examination to establish their right of admission into the United States, each as the wife of a citizen of the United States and admis-

sible as such under the terms of the treaties between the United States and China and the Chinese Exclusion and Restriction Acts and the rules and regulations promulgated thereunder. The Commissioner of Immigration did not accord the contemplated hearing, but caused each of the said applicants, that is the wives, to be solely examined in her case before a Board of Special Inquiry, which thereupon denied each of them admission into the United States under the provisions of the Immigration Act of 1924, which became effective July 1st, 1924, and after the date of the respective marriages of appellants. No attempt was made to permit the husbands of these women a chance to be present or heard at said board hearing. An appeal was at once taken to the Secretary of Labor, where suitable protests and briefs were filed, after which the Secretary of Labor dismissed the appeal in each instance and affirmed the excluding decision. The excluding decisions were substantially the same in each case and by way of illustration that of Ng Yuet Seung, the last named appellant herein, will suffice; the ground for the Secretary's adverse ruling being as follows:

"This is the case of a young Chinese woman who arrived at the port of San Francisco on July 11th, 1924, after the present law had become effective, and seeks admission as the wife of a citizen. Neither the citizenship of the alleged husband, nor the relation-[fol. 3] ship of the applicant to him, has been investigated for the reason that even if it were conceded that both elements exist she would still be inadmissible, as Section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship, and the Department has no alternative than to recommend exclusion."

The petition alleges that there has been a misconstruction and a mistaken and wrongful interpretation of the Immigration Act of 1924, the effect of which has been to violate the treaty and statutory rights of appellants, as specifically recognized by the act itself, and said incorrect statutory construction violates and disregards the treaty, statutory and constitutional rights of appellants, who are citizens of the United States, and their wives who were and are persons of the Chinese race. The petition was supplementally amended by filing the original immigration records in the case of each of the detained, and as so amended the appellee interposed a general demurrer, which was sustained by the lower court on October 25th, 1924, who thereupon refused to issue the writ of habeas corpus, as prayed for, and denied the petition, after which the case was immediately appealed by the citizen husbands and their wives as appellants herein, and docketed in this Court.

The lower court in the case at bar disapproved the ground of rejection of the Secretary of Labor, holding that Chinese women ineligible to naturalization who had become and are the wives of citizens of the United States, were not entitled to admission under the terms of the Immigration Act of 1924, but bases his denial of the petition upon a ground not made by the Board of Special Inquiry at

the port, nor the Secretary of Labor on appeal, nor at the hearing before the lower court; the concluding portion of the decision of the lower court being as follows:

"I conclude therefore that it would have been the duty of the respondent in the case now under consideration to permit the petitioners to enter if their husbands, being citizens of the United States, had complied with the provisions of section 9 Subd. (b), (c) and (d), of the act by filing with the Commissioner General the petition therein specified, resulting in the issuance to said petitioners of an [fol. 4] immigration visa by the consular officer to whom application therefor had been made. But as it appears that no such proceedings were taken by or on behalf of the petitioners, they have not established their right to enter. The demurrer to the petition is therefore sustained."

The wives in detention were upon the high seas en route to the United States on July 1st, 1924, when the new Immigration Act became effective. The rules and regulations promulgated by the Commissioner General of Immigration, with the approval of the Secretary of Labor, on July 1st, 1924, No. 55263/General, Document No. 904, Chinese Rules and Regulations under the Immigration Act of 1924, conclude as follows:

"Under the new law no Chinese alien wife or alien child of the Chinese Race of an American citizen is admissible solely because of such relationship to such person."

And Document No. 922, issued by the same authority, provides in part as follows:

Immigration Quotas According to Nationality Proclaimed in Pursuance of the Immigration Act of 1924

These quotas are available only to aliens who are eligible to citizenship in the United States.

* * * * * * *

	Annual quota
*China	100*

* * * * * * *

The same legal propositions upon behalf of other such applicants for admission were decided favorably to the petitioners by the United States District Court for the Western District of Washington at Seattle on September 23rd, 1924: In re Goon Dip et als. on habeas corpus; and before the United States District Court for the District of Massachusetts on October 17th, 1924: In re Chiu Shee on habeas corpus.

*For each of the Countries indicated by an asterisk (*) is established a nominal quota according to the minimum fixed by law. These nominal quotas, as in the case of all quotas hereby established, are available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States."

[fol. 5] The immigration visa mentioned was impossible of procurement by the appellants under the rules and regulations as stated, and would have been ineffective if presented under the Department's ruling of inadmissibility on account of race.

Questions Certified

The questions of law concerning which the Circuit Court of Appeals for the Ninth Circuit desires instructions of the Supreme Court are:

1. Should the petitioners be refused admission to the United States either

(a) Because of the want of a visa; or

(b) Because of want of right of admission if found to be Chinese wives of American citizens.

Dated at San Francisco, California, November 17th, 1924.

Wm. B. Gilbert, Wm. H. Hunt, Frank H. Rudkin, Judges of the U. S. Circuit Court of Appeals for the Ninth Circuit.

Clerk's Certificate

Endorsed: Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code. Filed November 17, 1924. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

Attest:

A true copy.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

[fol. 6] [Endorsed:] No. 4384. In the United States Circuit Court of Appeals for the Ninth Circuit. Chang Chan, Wong Jung Kay, Yee Sin Jung and Jing Hing Wah, petitioners, and Chan Shee, Kon Shee, Wong Shee, and Ng Yuet Seung, detained, on Habeas Corpus, appellants, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco. Appeal from the United States District Court of Appeals for the Northern District of California, Southern Division thereof, Second Division. Certified copy of certificate of the United States Circuit Court of Appeals for the Ninth Circuit, certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code.

Endorsed on cover: File No. 30,735. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 770. Chang Chan, Wong Hung Kay, Yee Sin Jung et al., (Certificate) vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco. Filed December 12th, 1924. File No. 30,735.